

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	8:02CR429
Plaintiff,	)	
	)	
v.	)	
	)	ORDER
WILLIAM T. MONNIER,	)	
	)	
Defendant.	)	
	)	

This matter is before the court for initial review of defendant's "Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" ("§ 2255 motion"), Filing No. 214. The rules governing section 2255 proceedings require an initial review of a defendant's § 2255 motion. 28 U.S.C. foll. § 2255 ("§ 2255 Rules"), 4(b). Rule 4(b) requires the court to examine the motion to determine "[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," in which case, the court "must dismiss the motion and direct the clerk to notify the moving party." *Id.* If the motion is not dismissed, the judge must order the United States Attorney to respond. *Id.*

After a jury trial, defendant Monnier was convicted of conspiracy to distribute methamphetamine and distribution of methamphetamine that led to the death of a person. He was sentenced to two concurrent terms of imprisonment of 360 months. The defendant appealed his conviction and sentence, and the Eighth Circuit Court of Appeals affirmed. *United States v. Monnier*, 412 F.3d 859 (8th Cir. 2005). The United States Supreme Court denied certiorari. *Monnier v. United States*, No. 05-7671, 126 S. Ct. 1083 (Jan. 9, 2006).

In his *pro se* form petition, Monnier alleges that he is entitled to relief under 28 U.S.C. § 2255 because he was sentenced in violation of *Blakely v. Washington*, 542 U.S.

296 (2004), and *United States v. Booker*, 543 U.S. 220 (2005). He argues that the district court would have sentenced him to a shorter term of imprisonment under an advisory guidelines scheme. He also alludes to ineffective assistance of counsel at sentencing and on appeal. The court finds, on review of the motion, attached exhibits, and the record of prior proceedings, that it does not plainly appear that the defendant "is not entitled to relief." § 2255 Rule 4(b). The court finds, and the record reflects, that it would likely have sentenced Monnier to a shorter term of imprisonment under an advisory guidelines regime. Accordingly, the defendant's § 2255 motion is not subject to summary dismissal and the court will order the United States to respond to the motion.

IT IS ORDERED:

1. Summary dismissal of the defendant's § 2255 motion (Filing No. 214) is not appropriate.
2. The United States shall file an answer, motion, or other response, together with a brief in support of its position, within thirty days of the date of this order.
3. The defendant shall respond to the government's pleading, if desired, within thirty days thereafter.
4. The Clerk of Court is directed to mail a copy of this order to the defendant at his current address, as he is no longer represented by counsel.

DATED this 20<sup>th</sup> day of August, 2007.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief District Court Judge